

Introduced by Senator Chesbro

February 25, 2000

An act to amend Sections 1522, 1548, 1568.0822, 1568.09, 1569.17, 1569.49, 1596.871, and 1596.99 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1992, as introduced, Chesbro. Care facilities.

(1) Existing law provides for the licensure and regulation of community care facilities, residential care facilities for persons with a chronic, life-threatening illness, residential care facilities for the elderly, and child day care facilities administered by the department. Existing law provides criminal sanctions for a violation of these provisions.

Existing law requires the department or any other approving authority to perform a criminal record check on an applicant for a license or special permit to operate or manage a community care facility, residential care facility for persons with a chronic, life-threatening illness, residential care facility for the elderly, child day care facility, or for a license, special permit, or certificate for a foster family home or certified family home, and on other persons, including nonclients, who reside in these facilities, staff, and employees. Existing law requires that an application be denied, unless an exemption is granted, if it is found that the applicant or any of the other designated persons has been convicted of prescribed crimes.

This bill would include certain elder abuse crimes among the prescribed crimes for which an exemption may not be

granted, and would make various technical, nonsubstantive changes.

(2) Existing law exempts from the criminal record check specified in (1) a spouse, significant other, or close friend of a client in a residential care facility for the elderly if the person is visiting the client or provides direct care and supervision to that client only.

This bill would similarly provide an exemption for a relative of the client.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety
2 Code is amended to read:

3 1522. The Legislature recognizes the need to
4 generate timely and accurate positive fingerprint
5 identification of applicants as a condition of issuing
6 licenses, permits, or certificates of approval for persons to
7 operate or provide direct care services in a community
8 care facility, foster family home, or a certified family
9 home of a licensed foster family agency. Therefore, the
10 Legislature supports the use of the fingerprint live-scan
11 technology, as identified in the long-range plan of the
12 Department of Justice for fully automating the processing
13 of fingerprints and other data by the year 1999, otherwise
14 known as the California Crime Information Intelligence
15 System (CAL-CII), to be used for applicant fingerprints.
16 It is the intent of the Legislature in enacting this section
17 to require the fingerprints of those individuals whose
18 contact with community care clients may pose a risk to
19 the clients' health and safety.

20 (a) Before issuing a license or special permit to any
21 person or persons to operate or manage a community
22 care facility, the State Department of Social Services shall
23 secure from an appropriate law enforcement agency a
24 criminal record to determine whether the applicant or
25 any other person specified in subdivision (b) has ever
26 been convicted of a crime other than a minor traffic



1 violation or arrested for any crime specified in Section 290
2 of the Penal Code, for violating Section 245 or 273.5,
3 subdivision (b) of Section 273a or, prior to January 1, 1994,
4 paragraph (2) of Section 273a of the Penal Code, or for
5 any crime for which the department cannot grant an
6 exemption if the person was convicted and the person has
7 not been exonerated. That criminal history information
8 shall include the full criminal record, of any of those
9 persons, and subsequent arrest information pursuant to
10 Section 11105.2 of the Penal Code. No fee shall be charged
11 by the Department of Justice or the State Department of
12 Social Services for the fingerprinting of an applicant for
13 a license or special permit to operate a facility providing
14 nonmedical board, room, and care for six or less children
15 or for obtaining a criminal record of the applicant
16 pursuant to this section. The following shall apply to the
17 criminal record information:

18 (1) If the State Department of Social Services finds
19 that the applicant, or any other person specified in
20 subdivision (b), has been convicted of a crime other than
21 a minor traffic violation, the application shall be denied,
22 unless the director grants an exemption pursuant to
23 subdivision (g).

24 (2) If the State Department of Social Services finds
25 that the applicant, or any person specified in subdivision
26 (b) is awaiting trial for a crime other than a minor traffic
27 violation, the State Department of Social Services shall
28 cease processing the application until the conclusion of
29 the trial.

30 (3) If no criminal record information has been
31 recorded, the Department of Justice shall provide the
32 applicant and the State Department of Social Services
33 with a statement of that fact.

34 (4) If the State Department of Social Services finds
35 after licensure that the licensee, or any other person
36 specified in paragraph (2) of subdivision (b), has been
37 convicted of a crime other than a minor traffic violation,
38 the license may be revoked, unless the director grants an
39 exemption pursuant to subdivision (g).

1 (5) An applicant and any other person specified in
2 subdivision (b) shall submit a second set of fingerprints
3 to the Department of Justice for the purpose of searching
4 the criminal records of the Federal Bureau of
5 Investigation, in addition to the criminal records search
6 required by this subdivision. If an applicant and all other
7 persons described in subdivision (b) meet all of the
8 conditions for licensure, except receipt of the Federal
9 Bureau of Investigation's criminal history information for
10 the applicant or any of the persons described in
11 subdivision (b), the department may issue a license if the
12 applicant and each person described in subdivision (b)
13 has signed and submitted a statement that he or she has
14 never been convicted of a crime in the United States,
15 other than a traffic infraction, as defined in paragraph (1)
16 of subdivision (a) of Section 42001 of the Vehicle Code.
17 If, after licensure, the department determines that the
18 licensee or ~~a~~ *any other* person specified in subdivision (b)
19 has a criminal record, the license may be revoked
20 pursuant to Section 1550. The department may also
21 suspend the license pending an administrative hearing
22 pursuant to Section 1550.5.

23 (b) In addition to the applicant, this section shall be
24 applicable to criminal convictions of the following
25 persons:

26 (1) Adults responsible for administration or direct
27 supervision of staff.

28 (2) Any person, other than a client, residing in the
29 facility.

30 (3) Any person who provides client assistance in
31 dressing, grooming, bathing, or personal hygiene. Any
32 nurse assistant or home health aide meeting the
33 requirements of Section 1338.5 or 1736.6, respectively,
34 who is not employed, retained, or contracted by the
35 licensee, and who has been certified or recertified on or
36 after July 1, 1998, shall be deemed to meet the criminal
37 record clearance requirements of this section. A certified
38 nurse assistant and certified home health aide who will be
39 providing client assistance and who falls under this
40 exemption shall provide one copy of his or her current

1 certification, prior to providing care, to the adult
2 community care facility. The facility shall maintain the
3 copy of the certification on file as long as care is being
4 provided by the certified nurse assistant or certified home
5 health aide at the facility. Nothing in this paragraph
6 restricts the right of the department to exclude a certified
7 nurse assistant or certified home health aide from a
8 licensed community care facility pursuant to Section
9 1558.

10 (4) (A) Any staff person, volunteer, or employee who
11 has contact with the clients. A volunteer shall be exempt
12 from the requirements of this subdivision if the volunteer
13 is a relative of a client in care at the facility and is not used
14 to replace or supplement staff in providing direct care
15 and supervision of clients.

16 (B) A volunteer in an adult residential facility shall be
17 exempt from the requirements of this subdivision if he or
18 she is a relative, significant other, or close friend of a client
19 receiving care in the facility and the volunteer is not used
20 to replace or supplant staff in providing direct care and
21 supervision of clients.

22 (5) If the applicant is a firm, partnership, association,
23 or corporation, the chief executive officer or other person
24 serving in like capacity.

25 (6) Additional officers of the governing body of the
26 applicant, or other persons with a financial interest in the
27 applicant, as determined necessary by the department by
28 regulation. The criteria used in the development of these
29 regulations shall be based on the person's capability to
30 exercise substantial influence over the operation of the
31 facility.

32 (c) (1) Subsequent to initial licensure, any person
33 specified in subdivision (b) and not exempted from
34 fingerprinting shall, as a condition to employment,
35 residence, or presence in a community care facility, be
36 fingerprinted and sign a declaration under penalty of
37 perjury regarding any prior criminal convictions. The
38 licensee shall submit these fingerprints to the
39 Department of Justice, along with a second set of
40 fingerprints for the purpose of searching the records of

1 the Federal Bureau of Investigation, or to comply with
2 paragraph (1) of subdivision (h), prior to the person's
3 employment, residence, or initial presence in the
4 community care facility. These fingerprints shall be on a
5 card provided by the State Department of Social Services
6 for the purpose of obtaining a permanent set of
7 fingerprints, and shall be submitted to the Department of
8 Justice by the licensee or sent by electronic transmission
9 in a manner approved by the State Department of Social
10 Services. A licensee's failure to submit fingerprints to the
11 Department of Justice or to comply with paragraph (1)
12 of subdivision (h), as required in this section, shall result
13 in the citation of a deficiency and the immediate
14 assessment of civil penalties in the amount of one
15 hundred dollars (\$100) per violation. The department
16 may assess civil penalties for continued violations as
17 permitted by Section 1548. The fingerprints shall then be
18 submitted to the State Department of Social Services for
19 processing. Upon request of the licensee, who shall
20 enclose a self-addressed stamped postcard for this
21 purpose, the Department of Justice shall verify receipt of
22 the fingerprints.

23 (2) Within 14 calendar days of the receipt of the
24 fingerprints, the Department of Justice shall notify the
25 State Department of Social Services of the criminal
26 record information, as provided for in subdivision (a). If
27 no criminal record information has been recorded, the
28 Department of Justice shall provide the licensee and the
29 State Department of Social Services with a statement of
30 that fact within 14 calendar days of receipt of the
31 fingerprints. Documentation of the individual's
32 clearance or exemption shall be maintained by the
33 licensee and be available for inspection. If new
34 fingerprints are required for processing, the Department
35 of Justice shall, within 14 calendar days from the date of
36 receipt of the fingerprints, notify the licensee that the
37 fingerprints were illegible. When live-scan technology is
38 operational, as defined in Section 1522.04, the
39 Department of Justice shall notify the State Department
40 of Social Services, as required by that section, and the



1 State Department of Social Services shall also notify the
2 licensee by mail, within 14 days of electronic transmission
3 of the fingerprints to the Department of Justice, if the
4 person has no criminal history recorded. A violation of the
5 regulations adopted pursuant to Section 1522.04 shall
6 result in the citation of a deficiency and an immediate
7 assessment of civil penalties in the amount of one
8 hundred dollars (\$100) per violation. The department
9 may assess civil penalties for continued violations as
10 permitted by Section 1548.

11 (3) Except for persons specified in paragraph (2) of
12 subdivision (b), the licensee shall endeavor to ascertain
13 the previous employment history of persons required to
14 be fingerprinted under this subdivision. If it is
15 determined by the State Department of Social Services,
16 on the basis of the fingerprints submitted to the
17 Department of Justice, that the person has been
18 convicted of, or is awaiting trial for, a sex offense against
19 a minor, or has been convicted for an offense specified in
20 Section 243.4, 273a, or 273d or subdivision (a) or (b) of
21 Section 368 of the Penal Code, or a felony, the State
22 Department of Social Services shall notify the licensee to
23 act immediately to terminate the person's employment,
24 remove the person from the community care facility, or
25 bar the person from entering the community care facility.
26 The State Department of Social Services may
27 subsequently grant an exemption pursuant to subdivision
28 (g). If the conviction or arrest was for another crime,
29 except a minor traffic violation, the licensee shall, upon
30 notification by the State Department of Social Services,
31 act immediately to either (1) terminate the person's
32 employment, remove the person from the community
33 care facility, or bar the person from entering the
34 community care facility; or (2) seek an exemption
35 pursuant to subdivision (g). The State Department of
36 Social Services shall determine if the person shall be
37 allowed to remain in the facility until a decision on the
38 exemption is rendered. A licensee's failure to comply
39 with the department's prohibition of employment,
40 contact with clients, or presence in the facility as required

1 by this paragraph shall be grounds for disciplining the
2 licensee pursuant to Section 1550.

3 (4) The department may issue an exemption on its
4 own motion pursuant to subdivision (g) if the person's
5 criminal history indicates that the person is of good
6 character based on the age, seriousness, and frequency of
7 the conviction or convictions. The department, in
8 consultation with interested parties, shall develop
9 regulation to establish the criteria to grant an exemption
10 pursuant to this paragraph.

11 (5) Concurrently with notifying the licensee pursuant
12 to paragraph (3), the department shall notify the affected
13 individual of his or her right to seek an exemption
14 pursuant to subdivision (g). The individual may seek an
15 exemption only if the licensee terminates the person's
16 employment or removes the person from the facility after
17 receiving notice from the department pursuant to
18 paragraph (3).

19 (d) (1) Before issuing a license, special permit, or
20 certificate of approval to any person or persons to operate
21 or manage a foster family home or certified family home
22 as described in Section 1506, the State Department of
23 Social Services or other approving authority shall secure
24 from an appropriate law enforcement agency a criminal
25 record to determine whether the applicant or any person
26 specified in subdivision (b) has ever been convicted of a
27 crime other than a minor traffic violation or arrested for
28 any crime specified in Section 290 of the Penal Code or
29 arrested for violating Section 245 or 273.5, subdivision (b)
30 of Section 273a or, prior to January 1, 1994, paragraph (2)
31 of Section 273a of the Penal Code, or for any crime for
32 which the department cannot grant an exemption if the
33 person was convicted and the person has not been
34 exonerated. That criminal history information shall
35 include the full criminal record, if any, of those persons.
36 No fee shall be charged by the Department of Justice or
37 the State Department of Social Services for the
38 fingerprinting of an applicant for a license, special
39 permit, or certificate of approval described in this
40 subdivision. The record, if any, shall be taken into

1 consideration when evaluating a prospective applicant.
2 The following shall apply to the criminal record
3 information:

4 (A) If the applicant or other persons specified in
5 subdivision (b) have convictions that would make the
6 applicant's home unfit as a foster family home or a
7 certified family home, the license, special permit, or
8 certificate of approval shall be denied.

9 (B) If the State Department of Social Services finds
10 that the applicant, or any person specified in subdivision
11 (b) is awaiting trial for a crime other than a minor traffic
12 violation, the State Department of Social Services or
13 other approving authority shall cease processing the
14 application until the conclusion of the trial.

15 (C) For the purposes of this subdivision, a criminal
16 record clearance provided under Section 8712 of the
17 Family Code may be used by the department or other
18 approving agency.

19 (D) An applicant for a foster family home license or for
20 certification as a family home, and any other person
21 specified in subdivision (b), shall submit a set of
22 fingerprints to the Department of Justice for the purpose
23 of searching the criminal records of the Federal Bureau
24 of Investigation, in addition to the criminal records search
25 required by subdivision (a). If an applicant meets all
26 other conditions for licensure, except receipt of the
27 Federal Bureau of Investigation's criminal history
28 information for the applicant and all persons described in
29 subdivision (b), the department may issue a license, or
30 the foster family agency may issue a certificate of
31 approval, if the applicant, and each person described in
32 subdivision (b), has signed and submitted a statement
33 that he or she has never been convicted of a crime in the
34 United States, other than a traffic infraction, as defined in
35 paragraph (1) of subdivision (a) of Section 42001 of the
36 Vehicle Code. If, after licensure or certification, the
37 department determines that the licensee, certified foster
38 parent, or any person specified in subdivision (b) has a
39 criminal record, the license may be revoked pursuant to
40 Section 1550 and the certificate of approval revoked

1 pursuant to subdivision (b) of Section 1534. The
2 department may also suspend the license pending an
3 administrative hearing pursuant to Section 1550.5.

4 (2) Any person specified in this subdivision shall, as a
5 part of the application, be fingerprinted and sign a
6 declaration under penalty of perjury regarding any prior
7 criminal convictions or arrests for any crime against a
8 child, spousal or cohabitant abuse or, any crime for which
9 the department cannot grant an exemption if the person
10 was convicted and shall submit these fingerprints to the
11 licensing agency or other approving authority.

12 (3) (A) The foster family agency shall obtain
13 fingerprints from certified home applicants and from
14 persons specified in subdivision (b) and shall submit
15 them directly to the Department of Justice or send them
16 by electronic transmission in a manner approved by the
17 State Department of Social Services. A foster family home
18 licensee or foster family agency shall submit these
19 fingerprints to the Department of Justice, along with a
20 second set of fingerprints for the purpose of searching the
21 records of the Federal Bureau of Investigation or to
22 comply with paragraph (1) of subdivision (b) prior to the
23 person's employment, residence, or initial presence. A
24 licensee's failure to submit fingerprints to the
25 Department of Justice, or comply with paragraph (1) of
26 subdivision (h), as required in this section, shall result in
27 a citation of a deficiency, and the immediate civil
28 penalties of one hundred dollars (\$100) per violation. The
29 State Department of Social Services may assess penalties
30 for continued violations, as permitted by Section 1548.
31 The fingerprints shall then be submitted to the State
32 Department of Social Services for processing.

33 (B) Upon request of the licensee, who shall enclose a
34 self-addressed envelope for this purpose, the Department
35 of Justice shall verify receipt of the fingerprints. Within
36 five working days of the receipt of the criminal record or
37 information regarding criminal convictions from the
38 Department of Justice, the department shall notify the
39 applicant of any criminal arrests or convictions. If no
40 arrests or convictions are recorded, the Department of

1 Justice shall provide the foster home licensee or the foster
2 family agency with a statement of that fact concurrent
3 with providing the information to the State Department
4 of Social Services.

5 (4) If the State Department of Social Services finds
6 that the applicant, or any other person specified in
7 subdivision (b), has been convicted of a crime other than
8 a minor traffic violation, the application shall be denied,
9 unless the director grants an exemption pursuant to
10 subdivision (g).

11 (5) If the State Department of Social Services finds
12 after licensure or the granting of the certificate of
13 approval that the licensee, certified foster parent, or any
14 other person specified in paragraph (2) of subdivision
15 (b), has been convicted of a crime other than a minor
16 traffic violation, the license or certificate of approval may
17 be revoked by the department or the foster family
18 agency, whichever is applicable, unless the director
19 grants an exemption pursuant to subdivision (g). A
20 licensee's failure to comply with the department's
21 prohibition of employment, contact with clients, or
22 presence in the facility as required by paragraph (3) of
23 subdivision (c) shall be grounds for disciplining the
24 licensee pursuant to Section 1550.

25 (e) The State Department of Social Services shall not
26 use a record of arrest to deny, revoke, or terminate any
27 application, license, employment, or residence unless the
28 department investigates the incident and secures
29 evidence, whether or not related to the incident of arrest,
30 that is admissible in an administrative hearing to establish
31 conduct by the person that may pose a risk to the health
32 and safety of any person who is or may become a client.
33 The State Department of Social Services is authorized to
34 obtain any arrest or conviction records or reports from
35 any law enforcement agency as necessary to the
36 performance of its duties to inspect, license, and
37 investigate community care facilities and individuals
38 associated with a community care facility.

39 (f) (1) For purposes of this section or any other
40 provision of this chapter, a conviction means a plea or

1 verdict of guilty or a conviction following a plea of nolo
2 contendere. Any action which the State Department of
3 Social Services is permitted to take following the
4 establishment of a conviction may be taken when the
5 time for appeal has elapsed, or the judgment of conviction
6 has been affirmed on appeal or when an order granting
7 probation is made suspending the imposition of sentence,
8 notwithstanding a subsequent order pursuant to Sections
9 1203.4 and 1203.4a of the Penal Code permitting the
10 person to withdraw his or her plea of guilty and to enter
11 a plea of not guilty, or setting aside the verdict of guilty,
12 or dismissing the accusation, information, or indictment.
13 For purposes of this section or any other provision of this
14 chapter, the record of a conviction, or a copy thereof
15 certified by the clerk of the court or by a judge of the
16 court in which the conviction occurred, shall be
17 conclusive evidence of the conviction. For purposes of
18 this section or any other provision of this chapter, the
19 arrest disposition report certified by the Department of
20 Justice, or documents admissible in a criminal action
21 pursuant to Section 969b of the Penal Code, shall be prima
22 facie evidence of the conviction, notwithstanding any
23 other provision of law prohibiting the admission of these
24 documents in a civil or administrative action.

25 (2) For purposes of this section or any other provision
26 of this chapter, the department shall consider criminal
27 convictions from another state or federal court as if the
28 criminal offense was committed in this state.

29 (g) (1) After review of the record, the director may
30 grant an exemption from disqualification for a license or
31 special permit as specified in paragraphs (1) and (4) of
32 subdivision (a), or for a license, special permit, or
33 certificate of approval as specified in paragraphs (4) and
34 (5) of subdivision (d), or for employment, residence, or
35 presence in a community care facility as specified in
36 paragraphs (3), (4), and (5) of subdivision (c), if the
37 director has substantial and convincing evidence to
38 support a reasonable belief that the applicant and the
39 person convicted of the crime, if other than the applicant,
40 are of such good character as to justify issuance of the



1 license or special permit or granting an exemption for
2 purposes of subdivision (c). Except as otherwise provided
3 in this subdivision, no exemption shall be granted
4 pursuant to this subdivision if the conviction was for an
5 offense specified in Section 220, 243.4, or 264.1;;
6 subdivision (a) of Section 273a or, prior to January 1, 1994,
7 paragraph (1) of Section 273a; Section 273d, 288, or 289;;
8 subdivision (a) of Section 290, ~~or~~; *subdivision (b), (c),*
9 *(d), or (f) of Section 368 or, prior to January 1, 1999,*
10 *subdivision (a) or (b) of Section 368, of the Penal Code;*;
11 or was a conviction of another crime against an individual
12 specified in subdivision (c) of Section 667.5 of the Penal
13 Code. The director may grant an exemption if the
14 employee or prospective employee, who was convicted
15 of a crime against an individual prescribed in paragraph
16 (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of
17 the Penal Code, has been rehabilitated as provided in
18 Section 4852.03 of the Penal Code, has maintained the
19 conduct required in Section 4852.05 of the Penal Code for
20 at least 10 years, and has the recommendation of the
21 district attorney representing the employee's county of
22 residence, or if the employee or prospective employee
23 has received a certificate of rehabilitation pursuant to
24 Chapter 3.5 (commencing with Section 4852.01) of Title
25 6 of Part 3 of the Penal Code.

26 (2) The department shall not prohibit a person from
27 being employed or having contact with clients in a facility
28 on the basis of a denied criminal record exemption
29 request or arrest information unless the department
30 complies with the requirements of Section 1558.

31 (h) (1) For purposes of compliance with this section,
32 the department may permit an individual to transfer a
33 current criminal records clearance, as defined in
34 subdivision (a), from one facility to another, as long as the
35 criminal record clearance has been processed through a
36 state licensing district office, and is being transferred to
37 another state licensing district office. The request shall be
38 in writing to the State Department of Social Services, and
39 shall include a copy of the person's driver's license or valid
40 identification card issued by the Department of Motor

1 Vehicles, or a valid photo identification issued by another
2 state or the United States government if the person is not
3 a California resident. Upon request of the licensee, who
4 shall enclose a self-addressed envelope for this purpose,
5 the State Department of Social Services shall verify
6 whether the individual has a clearance that can be
7 transferred.

8 (2) The State Department of Social Services shall hold
9 criminal record clearances in its active files for a
10 minimum of two years after an employee is no longer
11 employed at a licensed facility in order for the criminal
12 record clearance to be transferred.

13 (i) The full criminal record obtained for purposes of
14 this section may be used by the department or by a
15 licensed adoption agency as a clearance required for
16 adoption purposes.

17 (j) If a licensee or facility is required by law to deny
18 employment or to terminate employment of any
19 employee based on written notification from the state
20 department that the employee has a prior criminal
21 conviction or is determined unsuitable for employment
22 under Section 1558, the licensee or facility shall not incur
23 civil liability or unemployment insurance liability as a
24 result of that denial or termination.

25 (k) (1) The Department of Justice shall coordinate
26 with the State Department of Social Services to establish
27 and implement an automated live-scan processing system
28 for fingerprints in the district offices of the Community
29 Care Licensing Division of the State Department of
30 Social Services by July 1, 1999. These live-scan processing
31 units shall be connected to the main system at the
32 Department of Justice by July 1, 1999, and shall become
33 part of that department's pilot project in accordance with
34 its long-range plan. The State Department of Social
35 Services may charge a fee for the costs of processing a set
36 of live-scan fingerprints.

37 (2) The Department of Justice shall provide a report
38 to the Senate and Assembly fiscal committees, the
39 Assembly Human Services Committee, and to the Senate
40 Health and Human Services Committee by April 15, 1999,

1 regarding the completion of backlogged criminal record
2 clearance requests for all facilities licensed by the State
3 Department of Social Services and the progress on
4 implementing the automated live-scan processing system
5 in the two district offices pursuant to paragraph (1).

6 (l) Amendments to this section made in the 1999
7 portion of the 1999–2000 Regular Session shall be
8 implemented commencing 60 days after the effective
9 date of the act amending this section in the 1999 portion
10 of the 1999–2000 Regular Session, except that those
11 provisions for the submission of fingerprints for searching
12 the records of the Federal Bureau of Investigation shall
13 be implemented 90 days after the effective date of that
14 act.

15 SEC. 2. Section 1548 of the Health and Safety Code is
16 amended to read:

17 1548. (a) In addition to suspension or revocation of a
18 license issued under this chapter, the ~~department~~ *State*
19 *Department of Social Services* may levy a civil penalty in
20 addition to the penalties of suspension or revocation.

21 (b) The amount of the civil penalty shall not be less
22 than twenty-five dollars (\$25) or more than fifty dollars
23 (\$50) per day for each violation of this chapter except
24 where the nature or seriousness of the violation or the
25 frequency of the violation warrants a higher penalty or an
26 immediate civil penalty assessment, or both, as
27 determined by the department. In no event, shall a civil
28 penalty assessment exceed one hundred fifty dollars
29 (\$150) per day.

30 (c) Notwithstanding Section 1534, any facility that is
31 cited for repeating the same violation of this chapter
32 within 12 months of the first violation is subject to an
33 immediate civil penalty of one hundred fifty dollars
34 (\$150) and fifty dollars (\$50) for each day the violation
35 continues until the deficiency is corrected.

36 (d) Any facility that is assessed a civil penalty pursuant
37 to subdivision (c) which repeats the same violation of this
38 chapter within 12 months of the violation subject to
39 subdivision (c) is subject to an immediate civil penalty of

1 one hundred fifty dollars (\$150) for each day the violation
2 continues until the deficiency is corrected.

3 (e) The department shall adopt regulations
4 implementing this section.

5 (f) As provided in Section 11466.31 of the Welfare and
6 Institutions Code, the department may offset civil
7 penalties owed by a group home against moneys to be
8 paid by a county for the care of minors after the group
9 home has exhausted its appeal of the civil penalty
10 assessment. The department shall provide the group
11 home a reasonable opportunity to pay the civil penalty
12 before instituting the offset provision.

13 SEC. 3. Section 1568.0822 of the Health and Safety
14 Code is amended to read:

15 1568.0822. (a) In addition to suspension or
16 revocation of a license issued under this chapter, the
17 ~~department~~ *State Department of Social Services* may
18 levy a civil penalty in addition to the penalties of
19 suspension or revocation. The department shall adopt
20 regulations setting forth the appeal procedures for
21 deficiencies.

22 (b) The amount of the civil penalty shall not be less
23 than twenty-five dollars (\$25) or more than fifty dollars
24 (\$50) per day for each violation of this chapter, except
25 where the nature or seriousness of the violation or the
26 frequency of the violation warrants a higher penalty or an
27 immediate civil penalty assessment, or both, as
28 determined by the department. In no event shall a civil
29 penalty assessment exceed one hundred fifty dollars
30 (\$150) per day.

31 (c) Notwithstanding Section 1568.07, any residential
32 care facility that is cited for repeating the same violation
33 of this chapter within 12 months of the first violation is
34 subject to an immediate civil penalty of one hundred fifty
35 dollars (\$150) and fifty dollars (\$50) for each day the
36 violation continues until the deficiency is corrected.

37 (d) Any residential care facility that is assessed a civil
38 penalty pursuant to subdivision (c) which repeats the
39 same violation of this chapter within 12 months of the
40 violation subject to subdivision (c) shall be assessed an

1 immediate civil penalty of one thousand dollars (\$1,000)
2 and one hundred dollars (\$100) for each day the violation
3 continues until the deficiency is corrected, provided that
4 the violation is a serious violation.

5 (e) The department shall adopt regulations
6 implementing this section.

7 SEC. 4. Section 1568.09 of the Health and Safety Code
8 is amended to read:

9 1568.09. It is the intent of the Legislature in enacting
10 this section to require the fingerprints of those individuals
11 whose contact with residents of residential care facilities
12 for persons with a chronic, life-threatening illness may
13 pose a risk to the residents' health and safety.

14 Therefore, the Legislature supports the use of the
15 fingerprint live-scan technology, as identified in the
16 long-range plan of the Department of Justice for fully
17 automating the processing of fingerprints and other data
18 by the year 1999, otherwise known as the California
19 Crime Information Intelligence System (CAL-CII), to be
20 used for applicant fingerprints. It is the intent of the
21 Legislature, in enacting this section, to require the
22 fingerprints of those individuals whose contact with
23 community care clients may pose a risk to the clients'
24 health and safety.

25 (a) Before issuing a license to any person or persons to
26 operate or manage a residential care facility, the
27 department shall secure from an appropriate law
28 enforcement agency a criminal record to determine
29 whether the applicant or any other person specified in
30 subdivision (b) has ever been convicted of a crime other
31 than a minor traffic violation or arrested for any crime
32 specified in Section 290 of the Penal Code, for violating
33 Section 245 or 273.5, subdivision (b) of Section 273a or,
34 prior to January 1, 1994, paragraph (2) of Section 273a of
35 the Penal Code, or for any crime for which the
36 department cannot grant an exemption if the person was
37 convicted and the person has not been exonerated. That
38 criminal history information shall include the full
39 criminal record, if any, of those persons, and subsequent
40 arrest information pursuant to Section 11105.2 of the

1 Penal Code. The following shall apply to the criminal
2 record information:

3 (1) If the State Department of Social Services finds
4 that the applicant or any other person specified in
5 subdivision (b) has been convicted of a crime, other than
6 a minor traffic violation, the application shall be denied,
7 unless the director grants an exemption pursuant to
8 subdivision (f).

9 (2) If the State Department of Social Services finds
10 that the applicant, or any person specified in subdivision
11 (b) is awaiting trial for a crime other than a minor traffic
12 violation, the State Department of Social Services shall
13 cease processing the application until the conclusion of
14 the trial.

15 (3) If no criminal record information has been
16 recorded, the Department of Justice shall provide the
17 applicant and the State Department of Social Services
18 with a statement of that fact.

19 (4) If the State Department of Social Services finds
20 after licensure that the licensee, or any other person
21 specified in paragraph (2) of subdivision (b), has been
22 convicted of a crime other than a minor traffic violation,
23 the license may be revoked, unless the director grants an
24 exemption pursuant to subdivision (f).

25 (5) An applicant and any other person specified in
26 subdivision (b) shall submit to the Department of Justice
27 a second set of fingerprints for the purpose of searching
28 the records of the Federal Bureau of Investigation, in
29 addition to the search required by this subdivision. If an
30 applicant meets all other conditions for licensure, except
31 receipt of the Federal Bureau of Investigation's criminal
32 history information for the applicant and persons listed in
33 subdivision (b), the department may issue a license if the
34 applicant and each person described by subdivision (b)
35 has signed and submitted a statement that he or she has
36 never been convicted of a crime in the United States,
37 other than a traffic infraction as defined in paragraph (1)
38 of subdivision (a) of Section 42001 of the Vehicle Code.
39 If, after licensure, the department determines that the
40 licensee or person specified in subdivision (b) has a



1 criminal record, the license may be revoked pursuant to
2 subdivision (a) of Section 1568.82. The department may
3 also suspend the license pending an administrative
4 hearing pursuant to subdivision (b) of Section 1568.82.

5 (b) In addition to the applicant, the provisions of this
6 section shall be applicable to criminal convictions of the
7 following persons:

8 (1) Adults responsible for administration or direct
9 supervision of staff of the facility.

10 (2) Any person, other than a resident, residing in the
11 facility.

12 (3) Any person who provides resident assistance in
13 dressing, grooming, bathing, or personal hygiene. Any
14 nurse assistant or home health aide meeting the
15 requirements of Section 1338.5 or 1736.6, respectively,
16 who is not employed, retained, or contracted by the
17 licensee, and who has been certified or recertified on or
18 after July 1, 1998, shall be deemed to meet the criminal
19 record clearance requirements of this section. A certified
20 nurse assistant and certified home health aide who will be
21 providing client assistance and who falls under this
22 exemption shall provide one copy of his or her current
23 certification, prior to providing care, to the residential
24 care facility for persons with chronic, life-threatening
25 illness. The facility shall maintain the copy of the
26 certification on file as long as care is being provided by the
27 certified nurse assistant or certified home health aide at
28 the facility. Nothing in this paragraph restricts the right
29 of the department to exclude a certified nurse assistant or
30 certified home health aide from a licensed residential
31 care facility for persons with chronic, life-threatening
32 illness pursuant to Section 1568.092.

33 (4) (A) Any staff person, volunteer, or employee who
34 has contact with the residents.

35 (B) A volunteer shall be exempt from the
36 requirements of this subdivision if he or she is a relative,
37 significant other, or close friend of a client receiving care
38 in the facility and the volunteer does not provide direct
39 care and supervision of residents. A volunteer who
40 provides direct care and supervision shall be exempt if

1 the volunteer is a resident's spouse, significant other,
2 close friend, or family member and provides direct care
3 and supervision to that resident only at the request of the
4 resident.

5 (5) If the applicant is a firm, partnership, association,
6 or corporation, the chief executive officer or other person
7 serving in that capacity.

8 (6) Additional officers of the governing body of the
9 applicant, or other persons with a financial interest in the
10 applicant, as determined necessary by the department by
11 regulation. The criteria used in the development of these
12 regulations shall be based on the person's capability to
13 exercise substantial influence over the operation of the
14 facility.

15 (c) (1) (A) Subsequent to initial licensure, any
16 person specified in subdivision (b) and not exempted
17 from fingerprinting shall, as a condition to employment,
18 residence, or presence in a residential care facility, be
19 fingerprinted and sign a declaration under penalty of
20 perjury regarding any prior criminal convictions. The
21 licensee shall submit these fingerprints to the
22 Department of Justice, along with a second set of
23 fingerprints, for the purpose of searching the records of
24 the Federal Bureau of Investigation, or to comply with
25 paragraph (1) of subdivision (g), prior to the person's
26 employment, residence, or initial presence in the
27 residential care facility.

28 (B) These fingerprints shall be on a card provided by
29 the State Department of Social Services for the purpose
30 of obtaining a permanent set of fingerprints and
31 submitted to the Department of Justice by the licensee or
32 sent by electronic transmission in a manner approved by
33 the State Department of Social Services. A licensee's
34 failure to submit fingerprints to the Department of
35 Justice, or to comply with paragraph (1) of subdivision
36 (g), as required in this section, shall result in the citation
37 of a deficiency and an immediate assessment of civil
38 penalties in the amount of one hundred dollars (\$100) per
39 violation. The State Department of Social Services may
40 assess civil penalties for continued violations as allowed in

1 Section 1568.0822. The fingerprints shall then be
2 submitted to the State Department of Social Services for
3 processing. The licensee shall maintain and make
4 available for inspection documentation of the individual's
5 clearance or exemption.

6 (2) (A) Paragraph (1) shall cease to be implemented
7 when the State Department of Social Services adopts
8 emergency regulations pursuant to Section 1522.04, and
9 shall become inoperative when those regulations become
10 final.

11 (B) A violation of the regulations adopted pursuant to
12 Section 1522.04 shall result in the citation of a deficiency
13 and an immediate assessment of civil penalties in the
14 amount of one hundred dollars (\$100) per violation. The
15 department may assess civil penalties for continued
16 violations as permitted by Section 1568.0822.

17 (3) Within 14 calendar days of the receipt of the
18 fingerprints, the Department of Justice shall notify the
19 State Department of Social Services of the criminal
20 record information, as provided for in this subdivision. If
21 no criminal record information has been recorded, the
22 Department of Justice shall provide the licensee and the
23 State Department of Social Services with a statement of
24 that fact within 14 calendar days of receipt of the
25 fingerprints. If new fingerprints are required for
26 processing, the Department of Justice shall, within 14
27 calendar days from the date of receipt of the fingerprints,
28 notify the licensee that the fingerprints were illegible.
29 When live-scan technology is operational, as defined in
30 Section 1522.04, the Department of Justice shall notify the
31 department, as required by that section, and shall notify
32 the licensee by mail within 14 days of electronic
33 transmission of the fingerprints to the Department of
34 Justice, if the person has no criminal history record.

35 (4) Except for persons specified in paragraph (2) of
36 subdivision (b), the licensee shall endeavor to ascertain
37 the previous employment history of persons required to
38 be fingerprinted under this subdivision. If it is
39 determined by the State Department of Social Services,
40 on the basis of the fingerprints submitted to the

1 Department of Justice, that the person has been
2 convicted of a sex offense against a minor, an offense
3 specified in Section 243.4, 273a, or 273d, subdivision (a) or
4 (b) of Section 368 of the Penal Code, or a felony, the
5 department shall notify the licensee to act immediately
6 to terminate the person's employment, remove the
7 person from the residential care facility, or bar the person
8 from entering the residential care facility. The
9 department may subsequently grant an exemption
10 pursuant to subdivision (f). If the conviction was for
11 another crime, except a minor traffic violation, the
12 licensee shall, upon notification by the department, act
13 immediately to either (1) terminate the person's
14 employment, remove the person from the residential
15 care facility, or bar the person from entering the
16 residential care facility; or (2) seek an exemption
17 pursuant to subdivision (f). The department shall
18 determine if the person shall be allowed to remain in the
19 facility until a decision on the exemption is rendered. A
20 licensee's failure to comply with the department's
21 prohibition of employment, contact with clients, or
22 presence in the facility as required by this paragraph shall
23 be grounds for disciplining the licensee pursuant to
24 Section 1568.082.

25 (5) The department may issue an exemption on its
26 own motion pursuant to subdivision (f) if the person's
27 criminal history indicates that the person is of good
28 character based on the age, seriousness, and frequency of
29 the conviction or convictions. The department, in
30 consultation with interested parties, shall develop
31 regulations to establish the criteria to grant an exemption
32 pursuant to this paragraph.

33 (6) Concurrently with notifying the licensee pursuant
34 to paragraph (4), the department shall notify the affected
35 individual of his or her right to seek an exemption
36 pursuant to subdivision (f). The individual may seek an
37 exemption only if the licensee terminates the person's
38 employment or removes the person from the facility after
39 receiving notice from the department pursuant to
40 paragraph (4).



1 (d) (1) For purposes of this section or any other
2 provision of this chapter, a conviction means a plea or
3 verdict of guilty or a conviction following a plea of nolo
4 contendere. Any action which the department is
5 permitted to take following the establishment of a
6 conviction may be taken when the time for appeal has
7 elapsed, or the judgment of conviction has been affirmed
8 on appeal or when an order granting probation is made
9 suspending the imposition of the sentence,
10 notwithstanding a subsequent order pursuant to Sections
11 1203.4 and 1203.4a of the Penal Code permitting that
12 person to withdraw his or her plea of guilty and to enter
13 a plea of not guilty, setting aside the verdict of guilty, or
14 dismissing the accusation, information, or indictment.
15 For purposes of this chapter, the record of a conviction,
16 or a copy thereof certified by the clerk of the court or by
17 a judge of the court in which the conviction occurred,
18 shall be conclusive evidence of the conviction. For
19 purposes of this section or any other provision of this
20 chapter, the arrest disposition report certified by the
21 Department of Justice, or documents admissible in a
22 criminal action pursuant to Section 969b of the Penal
23 Code, shall be prima facie evidence of the conviction,
24 notwithstanding any other provision of law prohibiting
25 the admission of these documents in a civil or
26 administrative action.

27 (2) For purposes of this section or any other provision
28 of this chapter, the department shall consider criminal
29 convictions from another state or federal court as if the
30 criminal offense was committed in this state.

31 (e) The State Department of Social Services shall not
32 use a record of arrest to deny, revoke, or terminate any
33 application, license, employment, or residence unless the
34 department investigates the incident and secures
35 evidence, whether or not related to the incident of arrest,
36 that is admissible in an administrative hearing to establish
37 conduct by the person that may pose a risk to the health
38 and safety of any person who is or may become a client.
39 The State Department of Social Services is authorized to
40 obtain any arrest or conviction records or reports from

1 any law enforcement agency as necessary to the
2 performance of its duties to inspect, license, and
3 investigate community care facilities and individuals
4 associated with a community care facility.

5 (f) (1) After review of the record, the director may
6 grant an exemption from disqualification for a license as
7 specified in paragraphs (1) and (4) of subdivision (a), or
8 for employment, residence, or presence in a residential
9 care facility as specified in paragraphs (4), (5), and (6) of
10 subdivision (c) if the director has substantial and
11 convincing evidence to support a reasonable belief that
12 the applicant and the person convicted of the crime, if
13 other than the applicant, are of such good character as to
14 justify issuance of the license or special permit or granting
15 an exemption for purposes of subdivision (c). However,
16 no exemption shall be granted pursuant to this
17 subdivision if the conviction was for an offense specified
18 in Section 220, 243.4, or 264.1; subdivision (a) of Section
19 273a or, prior to January 1, 1994, paragraph (1) of Section
20 273a; Section 273d, 288, or 289; subdivision (a) of Section
21 290, ~~or~~; *subdivision (b), (c), (d), or (f) of Section 368 or,*
22 *prior to January 1, 1999, subdivision (a) or (b) of Section*
23 *368, of the Penal Code;* or was a conviction of another
24 crime against an individual specified in subdivision (c) of
25 Section 667.5 of the Penal Code.

26 (2) The department shall not prohibit a person from
27 being employed or having contact with clients in a facility
28 on the basis of a denied criminal record exemption
29 request or arrest information unless the department
30 complies with the requirements of Section 1568.092.

31 (g) (1) For purposes of compliance with this section,
32 the department may permit an individual to transfer a
33 current criminal records clearance, as defined in
34 subdivision (a), from one facility to another, as long as the
35 criminal record clearance has been processed through a
36 state licensing district office, and is being transferred to
37 another state licensing district office. The request shall be
38 in writing to the department, and shall include a copy of
39 the person's driver's license or valid identification card
40 issued by the Department of Motor Vehicles, or a valid

1 photo identification issued by another state or the United
2 States government if the person is not a California
3 resident. Upon request of the licensee, who shall enclose
4 a self-addressed stamped envelope for this purpose, the
5 department shall verify whether the individual has a
6 clearance that can be transferred.

7 (2) The State Department of Social Services shall hold
8 criminal records clearances in its active files for a
9 minimum of two years after an employee is no longer
10 employed at a licensed facility in order for the criminal
11 records clearance to be transferred.

12 (h) If a licensee or facility is required by law to deny
13 employment or to terminate employment of any
14 employee based on written notification from the state
15 department that the employee has a prior criminal
16 conviction or is determined unsuitable for employment
17 under Section 1568.092, the licensee or facility shall not
18 incur civil liability or unemployment insurance liability as
19 a result of that denial or termination.

20 (i) (1) The Department of Justice shall charge a fee
21 sufficient to cover its cost in providing services to comply
22 with the 14-day requirement contained in subdivision (c)
23 for provision to the department of criminal record
24 information.

25 (2) Paragraph (1) shall cease to be implemented when
26 the department adopts emergency regulations pursuant
27 to Section 1522.04, and shall become inoperative when
28 permanent regulations are adopted under that section.

29 (j) Amendments to the provisions of this section made
30 in the 1998 calendar year shall be implemented
31 commencing 60 days after the effective date of the act
32 amending this section in the 1998 calendar year, except
33 those provisions for the submission of fingerprints for
34 searching the records of the Federal Bureau of
35 Investigation, which shall be implemented commencing
36 January 1, 1999.

37 SEC. 5. Section 1569.17 of the Health and Safety Code
38 is amended to read:

39 1569.17. The Legislature recognizes the need to
40 generate timely and accurate positive fingerprint

1 identification of applicants as a condition of issuing
2 licenses, permits, or certificates of approval for persons to
3 operate or provide direct care services in a residential
4 care facility for the elderly. The Legislature supports the
5 use of the fingerprint live-scan technology, as identified
6 in the long-range plan of the Department of Justice for
7 fully automating the processing of fingerprints and other
8 data by the year 1999. It is the intent of the Legislature in
9 enacting this section to require the fingerprints of those
10 individuals whose contact with clients of residential care
11 facilities for the elderly may pose a risk to the clients'
12 health and safety.

13 (a) Before issuing a license to any person or persons to
14 operate or manage a residential care facility for the
15 elderly, the department shall secure from an appropriate
16 law enforcement agency a criminal record to determine
17 whether the applicant or any other person specified in
18 subdivision (b) has ever been convicted of a crime other
19 than a minor traffic violation or arrested for any crime
20 specified in Section 290 of the Penal Code, for violating
21 Section 245 or 273.5, subdivision (b) of Section 273a or,
22 prior to January 1, 1994, paragraph (2) of Section 273a of
23 the Penal Code, or for any crime for which the
24 department cannot grant an exemption if the person was
25 convicted and the person has been exonerated. That
26 criminal history information shall include the full
27 criminal record, if any, of those persons, and subsequent
28 arrest information pursuant to Section 11105.2 of the
29 Penal Code. The following shall apply to the criminal
30 record information:

31 (1) If the State Department of Social Services finds
32 that the applicant or any other person specified in
33 subdivision (b) has been convicted of a crime, other than
34 a minor traffic violation, the application shall be denied,
35 unless the director grants an exemption pursuant to
36 subdivision (f).

37 (2) If the State Department of Social Services finds
38 that the applicant, or any person specified in subdivision
39 (b) is awaiting trial for a crime other than a minor traffic
40 violation, the State Department of Social Services shall



1 cease processing the application until the conclusion of
2 the trial.

3 (3) If no criminal record information has been
4 recorded, the Department of Justice shall provide the
5 applicant and the State Department of Social Services
6 with a statement of that fact.

7 (4) If the State Department of Social Services finds
8 after licensure that the licensee, or any other person
9 specified in paragraph (2) of subdivision (b), has been
10 convicted of a crime other than a minor traffic violation,
11 the license may be revoked, unless the director grants an
12 exemption pursuant to subdivision (f).

13 (5) An applicant and any person specified in
14 subdivision (b) shall submit a second set of fingerprints
15 to the Department of Justice, for the purpose of searching
16 the records of the Federal Bureau of Investigation, in
17 addition to the search required by subdivision (a). If an
18 applicant meets all other conditions for licensure, except
19 receipt of the Federal Bureau of Investigation's criminal
20 history information for the applicant and persons listed in
21 subdivision (b), the department may issue a license if the
22 applicant and each person described by subdivision (b)
23 has signed and submitted a statement that he or she has
24 never been convicted of a crime in the United States,
25 other than a traffic infraction as defined in paragraph (1)
26 of subdivision (a) of Section 42001 of the Vehicle Code.
27 If, after licensure, the department determines that the
28 licensee or person specified in subdivision (b) has a
29 criminal record, the license may be revoked pursuant to
30 Section 1569.50. The department may also suspend the
31 license pending an administrative hearing pursuant to
32 Sections 1569.50 and 1569.51.

33 (b) In addition to the applicant, the provisions of this
34 section shall apply to criminal convictions of the following
35 persons:

36 (1) (A) Adults responsible for administration or
37 direct supervision of staff.

38 (B) Any person, other than a client, residing in the
39 facility. Residents of unlicensed independent senior
40 housing facilities that are located in contiguous buildings

1 on the same property as a residential care facility for the
2 elderly shall be exempt from these requirements.

3 (C) Any person who provides client assistance in
4 dressing, grooming, bathing, or personal hygiene. Any
5 nurse assistant or home health aide meeting the
6 requirements of Section 1338.5 or 1736.6, respectively,
7 who is not employed, retained, or contracted by the
8 licensee, and who has been certified or recertified on or
9 after July 1, 1998, shall be deemed to meet the criminal
10 record clearance requirements of this section. A certified
11 nurse assistant and certified home health aide who will be
12 providing client assistance and who falls under this
13 exemption shall provide one copy of his or her current
14 certification, prior to providing care, to the residential
15 care facility for the elderly. The facility shall maintain the
16 copy of the certification on file as long as the care is being
17 provided by the certified nurse assistant or certified home
18 health aide at the facility. Nothing in this paragraph
19 restricts the right of the department to exclude a certified
20 nurse assistant or certified home health aide from a
21 licensed residential care facility for the elderly pursuant
22 to Section 1569.58.

23 (D) Any staff person, volunteer, or employee who has
24 contact with the clients.

25 (E) If the applicant is a firm, partnership, association,
26 or corporation, the chief executive officer or other person
27 serving in a similar capacity.

28 (F) Additional officers of the governing body of the
29 applicant or other persons with a financial interest in the
30 applicant, as determined necessary by the department by
31 regulation. The criteria used in the development of these
32 regulations shall be based on the person's capability to
33 exercise substantial influence over the operation of the
34 facility.

35 (2) The following persons are exempt from
36 requirements applicable under paragraph (1):

37 (A) A spouse, *relative*, significant other, or close friend
38 of a client shall be exempt if this person is visiting the
39 client or provides direct care and supervision to that
40 client only.



1 (B) A volunteer to whom all of the following apply:

2 (i) The volunteer is at the facility during normal
3 waking hours.

4 (ii) The volunteer is directly supervised by the
5 licensee or a facility employee with a criminal record
6 clearance or exemption.

7 (iii) The volunteer spends no more than 16 hours per
8 week at the facility.

9 (iv) The volunteer does not provide clients with
10 assistance in dressing, grooming, bathing, or personal
11 hygiene.

12 (v) The volunteer is not left alone with clients in care.

13 (C) A third-party contractor retained by the facility if
14 the contractor is not left alone with clients in care.

15 (D) A third-party contractor or other business
16 professional retained by a client and at the facility at the
17 request or by permission of that client. These individuals
18 shall not be left alone with other clients.

19 (E) Licensed or certified medical professionals are
20 exempt from fingerprint and criminal background check
21 requirements imposed by community care licensing. This
22 exemption shall not apply to a person who is a community
23 care facility licensee or an employee of the facility.

24 (F) Employees of licensed home health agencies and
25 members of licensed hospice interdisciplinary teams who
26 have contact with a resident of a residential care facility
27 at the request of the resident or resident's legal
28 decisionmaker are exempt from fingerprint and criminal
29 background check requirements imposed by community
30 care licensing. This exemption shall not apply to a person
31 who is a community care facility licensee or an employee
32 of the facility.

33 (G) Clergy and other spiritual caregivers who are
34 performing services in common areas of the residential
35 care facility, or who are advising an individual resident at
36 the request of, or with permission of, the resident, are
37 exempt from fingerprint and criminal background check
38 requirements imposed by community care licensing. This
39 exemption shall not apply to a person who is a community
40 care facility licensee or an employee of the facility.

1 (H) Nothing in this paragraph shall prevent a licensee
2 from requiring a criminal record clearance of any
3 individual exempt from the requirements of this section,
4 provided that the individual has client contact.

5 (c) (1) (A) Subsequent to initial licensure, any
6 person required to be fingerprinted pursuant to
7 subdivision (b) shall, as a condition to employment,
8 residence, or presence in a residential facility for the
9 elderly, be fingerprinted and sign a declaration under
10 penalty of perjury regarding any prior criminal
11 convictions. The licensee shall submit these fingerprints,
12 along with a second set of fingerprints for the purpose of
13 searching the records of the Federal Bureau of
14 Investigation, to the Department of Justice, or to comply
15 with paragraph (1) of subdivision (g) prior to the
16 person's employment, residence, or initial presence in
17 the residential care facility for the elderly.

18 (B) These fingerprints shall be on a fingerprint card
19 provided by the State Department of Social Services and
20 submitted to the Department of Justice by the licensee or
21 sent by electronic transmission in a manner approved by
22 the State Department of Social Services. A licensee's
23 failure to submit fingerprints to the Department of
24 Justice, or to comply with paragraph (1) of subdivision
25 (g), as required in this section, shall result in the citation
26 of a deficiency and an immediate assessment of civil
27 penalties in the amount of one hundred dollars (\$100) per
28 violation. The State Department of Social Services may
29 assess civil penalties for continued violations as permitted
30 by Section 1569.49. The licensee shall then submit these
31 fingerprints to the State Department of Social Services
32 for processing. Documentation of the individual's
33 clearance or exemption shall be maintained by the
34 licensee and be available for inspection. When live-scan
35 technology is operational, as defined in Section 1522.04,
36 the Department of Justice shall notify the department, as
37 required by that section, and notify the licensee by mail
38 within 14 days of electronic transmission of the
39 fingerprints to the Department of Justice, if the person
40 has no criminal record. A violation of the regulations

1 adopted pursuant to Section 1522.04 shall result in the
2 citation of a deficiency and an immediate assessment of
3 civil penalties in the amount of one hundred dollars
4 (\$100) per violation. The department may assess civil
5 penalties for continued violations as permitted by Section
6 1569.49.

7 (2) Within 14 calendar days of the receipt of the
8 fingerprints, the Department of Justice shall notify the
9 State Department of Social Services of the criminal
10 record information, as provided for in this subdivision. If
11 no criminal record information has been recorded, the
12 Department of Justice shall provide the licensee and the
13 State Department of Social Services with a statement of
14 that fact within 14 calendar days of receipt of the
15 fingerprints. If new fingerprints are required for
16 processing, the Department of Justice shall, within 14
17 calendar days from the date of receipt of the fingerprints,
18 notify the licensee that the fingerprints were illegible.

19 (3) Except for persons specified in paragraph (2) of
20 subdivision (b), the licensee shall endeavor to ascertain
21 the previous employment history of persons required to
22 be fingerprinted under this subdivision. If the State
23 Department of Social Services determines, on the basis of
24 the fingerprints submitted to the Department of Justice,
25 that the person has been convicted of a sex offense against
26 a minor, an offense specified in Section 243.4, 273a, or
27 273d, subdivision (a) or (b) of Section 368 of the Penal
28 Code, or a felony, the State Department of Social Services
29 shall notify the licensee in writing within 15 calendar days
30 of the receipt of the notification from the Department of
31 Justice to act immediately to terminate the person's
32 employment, remove the person from the residential
33 care facility for the elderly, or bar the person from
34 entering the residential care facility for the elderly. The
35 State Department of Social Services may subsequently
36 grant an exemption pursuant to subdivision (f). If the
37 conviction was for another crime, except a minor traffic
38 violation, the licensee shall, upon notification by the State
39 Department of Social Services, act immediately to either
40 (1) terminate the person's employment, remove the

1 person from the residential care facility for the elderly, or
2 bar the person from entering the residential care facility
3 for the elderly or (2) seek an exemption pursuant to
4 subdivision (f). The department shall determine if the
5 person shall be allowed to remain in the facility until a
6 decision on the exemption is rendered by the
7 department. A licensee's failure to comply with the
8 department's prohibition of employment, contact with
9 clients, or presence in the facility as required by this
10 paragraph shall be grounds for disciplining the licensee
11 pursuant to Section 1569.50.

12 (4) The department may issue an exemption on its
13 own motion pursuant to subdivision (f) if the person's
14 criminal history indicates that the person is of good
15 character based on the age, seriousness, and frequency of
16 the conviction or convictions. The department, in
17 consultation with interested parties, shall develop
18 regulations to establish the criteria to grant an exemption
19 pursuant to this paragraph.

20 (5) Concurrently with notifying the licensee pursuant
21 to paragraph (4), the department shall notify the affected
22 individual of his or her right to seek an exemption
23 pursuant to subdivision (f). The individual may seek an
24 exemption only if the licensee terminates the person's
25 employment or removes the person from the facility after
26 receiving notice from the department pursuant to
27 paragraph (4).

28 (d) (1) For purposes of this section or any other
29 provision of this chapter, a conviction means a plea or
30 verdict of guilty or a conviction following a plea of nolo
31 contendere. Any action that the department is permitted
32 to take following the establishment of a conviction may
33 be taken when the time for appeal has elapsed, or the
34 judgment of conviction has been affirmed on appeal or
35 when an order granting probation is made suspending
36 the imposition of the sentence, notwithstanding a
37 subsequent order pursuant to the provisions of Sections
38 1203.4 and 1203.4a of the Penal Code permitting a person
39 to withdraw his or her plea of guilty and to enter a plea
40 of not guilty, or setting aside the verdict of guilty, or



1 dismissing the accusation, information, or indictment.
 2 For purposes of this section or any other provision of this
 3 chapter, the record of a conviction, or a copy thereof
 4 certified by the clerk of the court or by a judge of the
 5 court in which the conviction occurred, shall be
 6 conclusive evidence of the conviction. For purposes of
 7 this section or any other provision of this chapter, the
 8 arrest disposition report certified by the Department of
 9 Justice or documents admissible in a criminal action
 10 pursuant to Section 969b of the Penal Code shall be prima
 11 facie evidence of the conviction, notwithstanding any
 12 other provision of law prohibiting the admission of these
 13 documents in a civil or administrative action.

14 (2) For purposes of this section or any other provision
 15 of this chapter, the department shall consider criminal
 16 convictions from another state or federal court as if the
 17 criminal offense was committed in this state.

18 (e) The State Department of Social Services shall not
 19 use a record of arrest to deny, revoke, or terminate any
 20 application, license, employment, or residence unless the
 21 department investigates the incident and secures
 22 evidence, whether or not related to the incident of arrest,
 23 that is admissible in an administrative hearing to establish
 24 conduct by the person that may pose a risk to the health
 25 and safety of any person who is or may become a client.
 26 The State Department of Social Services is authorized to
 27 obtain any arrest or conviction records or reports from
 28 any law enforcement agency as necessary to the
 29 performance of its duties to inspect, license, and
 30 investigate community care facilities and individuals
 31 associated with a community care facility.

32 (f) (1) After review of the record, the director may
 33 grant an exemption from disqualification for a license as
 34 specified in paragraphs (1) and (4) of subdivision (a), or
 35 for employment, residence, or presence in a residential
 36 care facility for the elderly as specified in paragraphs (4),
 37 (5), and (6) of subdivision (c) if the director has
 38 substantial and convincing evidence to support a
 39 reasonable belief that the applicant and the person
 40 convicted of the crime, if other than the applicant, are of

1 such good character as to justify issuance of the license or
2 special permit or granting an exemption for purposes of
3 subdivision (c). However, no exemption shall be granted
4 pursuant to this subdivision if the conviction was for an
5 offense specified in Section 220, 243.4, or 264.1;;
6 subdivision (a) of Section 273a or, prior to January 1, 1994,
7 paragraph (1) of Section 273a;; Section 273d, 288, or 289;;
8 subdivision (a) of Section 290,~~or~~; *subdivision (b), (c),*
9 *(d), or (f) of Section 368 or, prior to January 1, 1999,*
10 *subdivision (a) or (b) of Section 368, of the Penal Code;*
11 *or was a conviction of another crime against an individual*
12 *specified in subdivision (c) of Section 667.5 of the Penal*
13 *Code. The director shall notify in writing the licensee or*
14 *the applicant of his or her decision within 60 days of*
15 *receipt of all information from the applicant and other*
16 *sources determined necessary by the director for the*
17 *rendering of a decision pursuant to this subdivision.*

18 (2) The department shall not prohibit a person from
19 being employed or having contact with clients in a facility
20 on the basis of a denied criminal record exemption
21 request or arrest information unless the department
22 complies with the requirements of Section 1569.58.

23 (g) (1) For purposes of compliance with this section,
24 the department may permit an individual to transfer a
25 current criminal records clearance, as defined in
26 subdivision (a), from one facility to another, as long as the
27 criminal record clearance has been processed through a
28 state licensing district office, and is being transferred to
29 another state licensing district office. The request shall be
30 submitted in writing to the department, and shall include
31 a copy of the person's driver's license or valid
32 identification card issued by the Department of Motor
33 Vehicles, or a valid photo identification issued by another
34 state or the United States government if the person is not
35 a California resident. Upon request of the licensee, who
36 shall enclose a self-addressed stamped envelope for this
37 purpose, the department shall verify whether the
38 individual has a clearance that can be transferred.

39 (2) The State Department of Social Services shall hold
40 criminal records clearances in its active files for a

1 minimum of two years after an employee is no longer
2 employed at a licensed facility in order for the criminal
3 records clearances to be transferred under this section.

4 (h) If a licensee or facility is required by law to deny
5 employment or to terminate employment of any
6 employee based on written notification from the state
7 department that the employee has a prior criminal
8 conviction or is determined unsuitable for employment
9 under Section 1569.58, the licensee or facility shall not
10 incur civil liability or unemployment insurance liability as
11 a result of that denial or termination.

12 (i) Amendments to the provisions of this section made
13 in the 1998 calendar year shall be implemented
14 commencing 60 days after the effective date of the act
15 amending this section in the 1998 calendar year, except
16 those provisions for the submission of fingerprints for
17 searching the records of the Federal Bureau of
18 Investigation, which shall be implemented commencing
19 on January 1, 1999.

20 SEC. 6. Section 1569.49 of the Health and Safety Code
21 is amended to read:

22 1569.49. (a) In addition to suspension or revocation
23 of a license issued under this chapter, the ~~department~~
24 *State Department of Social Services* may levy a civil
25 penalty in addition to the penalties of suspension or
26 revocation. The department shall adopt regulations
27 setting forth the appeal procedures for deficiencies.

28 (b) The amount of the civil penalty shall not be less
29 than twenty-five dollars (\$25) or more than fifty dollars
30 (\$50) per day for each violation of this chapter except
31 where the nature or seriousness of the violation or the
32 frequency of the violation warrants a higher penalty or an
33 immediate civil penalty assessment, or both, as
34 determined by the department. In no event, shall a civil
35 penalty assessment exceed one hundred fifty dollars
36 (\$150) per day.

37 (c) Notwithstanding Section 1569.33, any residential
38 care facility for the elderly that is cited for repeating the
39 same violation of this chapter within 12 months of the first
40 violation is subject to an immediate civil penalty of one

1 hundred fifty dollars (\$150) and fifty dollars (\$50) for
2 each day the violation continues until the deficiency is
3 corrected.

4 (d) Any residential care facility for the elderly that is
5 assessed a civil penalty pursuant to subdivision (c) which
6 repeats the same violation of this chapter within 12
7 months of the violation subject to subdivision (c) shall be
8 assessed an immediate civil penalty of one thousand
9 dollars (\$1,000) and one hundred dollars (\$100) for each
10 day the violation continues until the deficiency is
11 corrected.

12 The department shall adopt regulations implementing
13 this section.

14 SEC. 7. Section 1596.871 of the Health and Safety
15 Code is amended to read:

16 1596.871. The Legislature recognizes the need to
17 generate timely and accurate positive fingerprint
18 identification of applicants as a condition of issuing
19 licenses, permits, or certificates of approval for persons to
20 operate or provide direct care services in a child care
21 center or family child care home. Therefore, the
22 Legislature supports the use of the fingerprint live-scan
23 technology, as defined in the long-range plan of the
24 Department of Justice for fully automating the processing
25 of fingerprints and other data by the year 1999, otherwise
26 known as the California Crime Information Intelligence
27 System (CAL-CII), to be used for applicant fingerprints.
28 It is the intent of the Legislature in enacting this section
29 to require the fingerprints of those individuals whose
30 contact with child day care facility clients may pose a risk
31 to the children's health and safety.

32 (a) Before issuing a license or special permit to any
33 person to operate or manage a day care facility, the
34 department shall secure from an appropriate law
35 enforcement agency a criminal record to determine
36 whether the applicant or any other person specified in
37 subdivision (b) has ever been convicted of a crime other
38 than a minor traffic violation or arrested for any crime
39 specified in Section 290 of the Penal Code, for violating
40 Section 245 or 273.5, subdivision (b) of Section 273a or,

1 prior to January 1, 1994, paragraph (2) of Section 273a of
2 the Penal Code, or for any crime for which the
3 department cannot grant an exemption if the person was
4 convicted and the person has not been exonerated. That
5 criminal history information shall include the full
6 criminal record, if any, of those persons, and subsequent
7 arrest information pursuant to Section 11105.2 of the
8 Penal Code. No fee shall be charged by the Department
9 of Justice or the department for the fingerprinting of an
10 applicant who will serve six or fewer children or any
11 family day care applicant for a license, or for obtaining a
12 criminal record of an applicant pursuant to this section.
13 The following shall apply to the criminal record
14 information:

15 (1) If the State Department of Social Services finds
16 that the applicant or any other person specified in
17 subdivision (b) has been convicted of a crime, other than
18 a minor traffic violation, the application shall be denied,
19 unless the director grants an exemption pursuant to
20 subdivision (f).

21 (2) If the State Department of Social Services finds
22 that the applicant, or any person specified in subdivision
23 (b), is awaiting trial for a crime other than a minor traffic
24 violation, the State Department of Social Services shall
25 cease processing the application until the conclusion of
26 the trial.

27 (3) If no criminal record information has been
28 recorded, the Department of Justice shall provide the
29 applicant and the State Department of Social Services
30 with a statement of that fact.

31 (4) If the State Department of Social Services finds
32 after licensure that the licensee, or any other person
33 specified in paragraph (2) of subdivision (b), has been
34 convicted of a crime other than a minor traffic violation,
35 the license may be revoked, unless the director grants an
36 exemption pursuant to subdivision (f).

37 (5) An applicant and any person specified in
38 subdivision (b) shall submit a second set of fingerprints
39 to the Department of Justice, for the purpose of searching
40 the records of the Federal Bureau of Investigation, in



1 addition to the search required by subdivision (a). If an
2 applicant meets all other conditions for licensure, except
3 receipt of the Federal Bureau of Investigation's criminal
4 history information for the applicant and persons listed in
5 subdivision (b), the department may issue a license if the
6 applicant and each person described by subdivision (b)
7 has signed and submitted a statement that he or she has
8 never been convicted of a crime in the United States,
9 other than a traffic infraction as defined in paragraph (1)
10 of subdivision (a) of Section 42001 of the Vehicle Code.
11 If, after licensure, the department determines that the
12 licensee or person specified in subdivision (b) has a
13 criminal record, the license may be revoked pursuant to
14 Section 1596.885. The department may also suspend the
15 license pending an administrative hearing pursuant to
16 Section 1596.886.

17 (b) (1) In addition to the applicant, this section shall
18 be applicable to criminal convictions of the following
19 persons:

20 (A) Adults responsible for administration or direct
21 supervision of staff.

22 (B) Any person, other than a child, residing in the
23 facility.

24 (C) Any person who provides care and supervision to
25 the children.

26 (D) Any staff person, volunteer, or employee who has
27 contact with the children.

28 (i) A volunteer providing time-limited specialized
29 services, shall be exempt from the requirements of this
30 subdivision if this person is directly supervised by the
31 licensee or a facility employee with a criminal record
32 clearance or exemption, the volunteer spends no more
33 than 16 hours per week at the facility, and the volunteer
34 is not left alone with children in care.

35 (ii) A student enrolled or participating at an
36 accredited educational institution shall be exempt from
37 the requirements of this subdivision if the student is
38 directly supervised by the licensee or a facility employee
39 with a criminal record clearance or exemption, the
40 facility has an agreement with the educational institution

1 concerning the placement of the student, the student
2 spends no more than 16 hours per week at the facility, and
3 the student is not left alone with children in care.

4 (iii) A volunteer who is a relative, legal guardian, or
5 foster parent of a client in the facility shall be exempt
6 from the requirements of this subdivision.

7 (iv) A contracted repair person retained by the
8 facility, if not left alone with children in care, shall be
9 exempt from the requirements of this subdivision.

10 (E) If the applicant is a firm, partnership, association,
11 or corporation, the chief executive officer, other person
12 serving in like capacity, or a person designated by the
13 chief executive officer as responsible for the operation of
14 the facility, as designated by the applicant agency.

15 (F) If the applicant is a local educational agency, the
16 president of the governing board, the school district
17 superintendent, or a person designated to administer the
18 operation of the facility, as designated by the local
19 educational agency.

20 (G) Additional officers of the governing body of the
21 applicant, or other persons with a financial interest in the
22 applicant, as determined necessary by the department by
23 regulation. The criteria used in the development of these
24 regulations shall be based on the person's capability to
25 exercise substantial influence over the operation of the
26 facility.

27 (H) This section does not apply to employees of child
28 care and development programs under contract with the
29 State Department of Education who have completed a
30 criminal records clearance as part of an application to the
31 Commission on Teacher Credentialing, and who possess
32 a current credential or permit issued by the commission,
33 including employees of child care and development
34 programs that serve both children subsidized under, and
35 children not subsidized under, a State Department of
36 Education contract. The Commission on Teacher
37 Credentialing shall notify the department upon
38 revocation of a current credential or permit issued to an
39 employee of a child care and development program
40 under contract with the State Department of Education.

1 (I) This section does not apply to employees of a child
2 care and development program operated by a school
3 district, county office of education, or community college
4 district under contract with the State Department of
5 Education who have completed a criminal records
6 clearance as a condition of employment. The school
7 district, county office of education, or community college
8 district upon receiving information that the status of an
9 employee's criminal record clearance has changed shall
10 submit that information to the department.

11 (2) Nothing in this subdivision shall prevent a licensee
12 from requiring a criminal record clearance of any
13 individuals exempt from the requirements under this
14 subdivision.

15 (c) (1) (A) Subsequent to initial licensure, any
16 person specified in subdivision (b) and not exempted
17 from fingerprinting shall, as a condition to employment,
18 residence, or presence in a child day care facility be
19 fingerprinted and sign a declaration under penalty of
20 perjury regarding any prior criminal conviction. The
21 licensee shall submit these fingerprints to the
22 Department of Justice, along with a second set of
23 fingerprints for the purpose of searching the records of
24 the Federal Bureau of Investigation, or to comply with
25 paragraph (1) of subdivision (h), prior to the person's
26 employment, residence, or initial presence in the child
27 day care facility.

28 (B) These fingerprints shall be on a card provided by
29 the State Department of Social Services for the purpose
30 of obtaining a permanent set of fingerprints and
31 submitted to the Department of Justice by the licensee or
32 sent by electronic transmission in a manner approved by
33 the State Department of Social Services. A licensee's
34 failure to submit fingerprints to the Department of
35 Justice, or to comply with paragraph (1) of subdivision
36 (h), as required in this section, shall result in the citation
37 of a deficiency, and an immediate assessment of civil
38 penalties in the amount of one hundred dollars (\$100) per
39 violation. The State Department of Social Services may
40 assess civil penalties for continued violations permitted

1 by Sections 1596.99 and 1597.62. The fingerprints shall
2 then be submitted to the State Department of Social
3 Services for processing. Within 14 calendar days of the
4 receipt of the fingerprints, the Department of Justice
5 shall notify the State Department of Social Services of the
6 criminal record information, as provided in this
7 subdivision. If no criminal record information has been
8 recorded, the Department of Justice shall provide the
9 licensee and the State Department of Social Services with
10 a statement of that fact within 14 calendar days of receipt
11 of the fingerprints. If new fingerprints are required for
12 processing, the Department of Justice shall, within 14
13 calendar days from the date of receipt of the fingerprints,
14 notify the licensee that the fingerprints were illegible.

15 (C) Documentation of the individual's clearance or
16 exemption shall be maintained by the licensee, and shall
17 be available for inspection. When live-scan technology is
18 operational, as defined in Section 1522.04, the
19 Department of Justice shall notify the department, as
20 required by that section, and notify the licensee by mail
21 within 14 days of electronic transmission of the
22 fingerprints to the Department of Justice, if the person
23 has no criminal record. Any violation of the regulations
24 adopted pursuant to Section 1522.04 shall result in the
25 citation of a deficiency and an immediate assessment of
26 civil penalties in the amount of one hundred dollars
27 (\$100) per violation. The department may assess civil
28 penalties for continued violations, as permitted by
29 Sections 1596.99 and 1597.62.

30 (2) Except for persons specified in paragraph (2) of
31 subdivision (b), the licensee shall endeavor to ascertain
32 the previous employment history of persons required to
33 be fingerprinted under this subdivision. If it is
34 determined by the department, on the basis of
35 fingerprints submitted to the Department of Justice, that
36 the person has been convicted of a sex offense against a
37 minor, an offense specified in Section 243.4, 273a, or 273d,
38 subdivision (a) or (b) of Section 368 of the Penal Code,
39 or a felony, the State Department of Social Services shall
40 notify the licensee to act immediately to terminate the

1 person's employment, remove the person from the child
2 day care facility, or bar the person from entering the child
3 day care facility. The department may subsequently
4 grant an exemption pursuant to subdivision (f). If the
5 conviction was for another crime except a minor traffic
6 violation, the licensee shall, upon notification by the State
7 Department of Social Services, act immediately to either
8 (1) terminate the person's employment, remove the
9 person from the child day care facility, or bar the person
10 from entering the child day care facility; or (2) seek an
11 exemption pursuant to subdivision (f). The department
12 shall determine if the person shall be allowed to remain
13 in the facility until a decision on the exemption is
14 rendered. A licensee's failure to comply with the
15 department's prohibition of employment, contact with
16 clients, or presence in the facility as required by this
17 paragraph shall be grounds for disciplining the licensee
18 pursuant to Section 1596.885 or 1596.886.

19 (3) The department may issue an exemption on its
20 own motion pursuant to subdivision (f) if the person's
21 criminal history indicates that the person is of good
22 character based on the age, seriousness, and frequency of
23 the conviction or convictions. The department, in
24 consultation with interested parties, shall develop
25 regulations to establish the criteria to grant an exemption
26 pursuant to this paragraph.

27 (4) Concurrently with notifying the licensee pursuant
28 to paragraph (3), the department shall notify the affected
29 individual of his or her right to seek an exemption
30 pursuant to subdivision (f). The individual may seek an
31 exemption only if the licensee terminates the person's
32 employment or removes the person from the facility after
33 receiving notice from the department pursuant to
34 paragraph (3).

35 (d) (1) For purposes of this section or any other
36 provision of this chapter, a conviction means a plea or
37 verdict of guilty or a conviction following a plea of nolo
38 contendere. Any action which the department is
39 permitted to take following the establishment of a
40 conviction may be taken when the time for appeal has

1 elapsed, or the judgment of conviction has been affirmed
2 on appeal or when an order granting probation is made
3 suspending the imposition of sentence, notwithstanding
4 a subsequent order pursuant to Sections 1203.4 and
5 1203.4a of the Penal Code permitting the person to
6 withdraw his or her plea of guilty and to enter a plea of
7 not guilty, or setting aside the verdict of guilty, or
8 dismissing the accusation, information, or indictment.
9 For purposes of this section or any other provision of this
10 chapter, the record of a conviction, or a copy thereof
11 certified by the clerk of the court or by a judge of the
12 court in which the conviction occurred, shall be
13 conclusive evidence of the conviction. For purposes of
14 this section or any other provision of this chapter, the
15 arrest disposition report certified by the Department of
16 Justice, or documents admissible in a criminal action
17 pursuant to Section 969b of the Penal Code, shall be prima
18 facie evidence of conviction, notwithstanding any other
19 provision of law prohibiting the admission of these
20 documents in a civil or administrative action.

21 (2) For purposes of this section or any other provision
22 of this chapter, the department shall consider criminal
23 convictions from another state or federal court as if the
24 criminal offense was committed in this state.

25 (e) The State Department of Social Services shall not
26 use a record of arrest to deny, revoke, or terminate any
27 application, license, employment, or residence unless the
28 department investigates the incident and secures
29 evidence, whether or not related to the incident of arrest,
30 that is admissible in an administrative hearing to establish
31 conduct by the person that may pose a risk to the health
32 and safety of any person who is or may become a client.
33 The State Department of Social Services is authorized to
34 obtain any arrest or conviction records or reports from
35 any law enforcement agency as necessary to the
36 performance of its duties to inspect, license, and
37 investigate community care facilities and individuals
38 associated with a community care facility.

39 (f) (1) After review of the record, the director may
40 grant an exemption from disqualification for a license or



1 special permit as specified in paragraphs (1) and (4) of
2 subdivision (a), or for employment, residence, or
3 presence in a child day care facility as specified in
4 paragraphs (3), (4), and (5) of subdivision (c) if the
5 director has substantial and convincing evidence to
6 support a reasonable belief that the applicant and the
7 person convicted of the crime, if other than the applicant,
8 are of good character so as to justify issuance of the license
9 or special permit or granting an exemption for purposes
10 of subdivision (c). However, no exemption shall be
11 granted pursuant to this subdivision if the conviction was
12 for an offense specified in Section 220, 243.4, or 264.1;
13 subdivision (a) of Section 273a or, prior to January 1, 1994,
14 paragraph (1) of Section 273a; Section 273d, 288, or 289;
15 subdivision (a) of Section 290, ~~or~~; *subdivision (b), (c),*
16 *(d), or (f) of Section 368 or, prior to January 1, 1999,*
17 *subdivision (a) or (b) of Section 368 of the Penal Code;*
18 or was a conviction of another crime against an individual
19 specified in subdivision (c) of Section 667.5 of the Penal
20 Code.

21 (2) The department shall not prohibit a person from
22 being employed or having contact with clients in a facility
23 on the basis of a denied criminal record exemption
24 request or arrest information unless the department
25 complies with the requirements of Section 1596.8897.

26 (g) Upon request of the licensee, who shall enclose a
27 self-addressed stamped postcard for this purpose, the
28 Department of Justice shall verify receipt of the
29 fingerprints.

30 (h) (1) For the purposes of compliance with this
31 section, the department may permit an individual to
32 transfer a current criminal records clearance, as defined
33 in subdivision (a), from one facility to another, as long as
34 the criminal record clearance has been processed
35 through a state licensing district office, and is being
36 transferred to another state licensing district office. The
37 request shall be in writing to the department, and shall
38 include a copy of the person's driver's license or valid
39 identification card issued by the Department of Motor
40 Vehicles, or a valid photo identification issued by another

1 state or the United States government if the person is not
2 a California resident. Upon request of the licensee, who
3 shall enclose a self-addressed stamped envelope for this
4 purpose, the department shall verify whether the
5 individual has a clearance that can be transferred.

6 (2) The State Department of Social Services shall hold
7 criminal records clearances in its active files for a
8 minimum of two years after an employee is no longer
9 employed at a licensed facility in order for the criminal
10 records clearances to be transferred.

11 (i) Amendments to this section made in the 1998
12 calendar year shall be implemented commencing 60 days
13 after the effective date of the act amending this section
14 in the 1998 calendar year, except those provisions for the
15 submission of fingerprints for searching the records of the
16 Federal Bureau of Investigation, which shall be
17 implemented commencing January 1, 1999.

18 SEC. 8. Section 1596.99 of the Health and Safety Code
19 is amended to read:

20 1596.99. (a) In addition to suspension or revocation
21 of a license issued under this chapter, the *State*
22 *Department of Social Services* may levy a civil penalty.
23 The civil penalty may be in addition to the penalties of
24 suspension or revocation.

25 (b) The amount of the civil penalty may not be less
26 than twenty-five dollars (\$25) nor more than fifty dollars
27 (\$50) per day for each violation of this chapter except
28 where (1) the nature of the violation, (2) the seriousness
29 of the violation, (3) the frequency of the violation, or (4)
30 any combination of these factors warrants a higher
31 penalty or an immediate civil penalty assessment as
32 specified in subdivision (c), or both. In no event shall a
33 civil penalty assessment exceed one hundred fifty dollars
34 (\$150) per day.

35 (c) Facilities cited for a repeated serious deficiency
36 shall be subject to an immediate civil penalty assessment
37 of one hundred fifty dollars (\$150) and fifty dollars (\$50)
38 per day thereafter until the deficiency is corrected.

39 (d) Facilities which are assessed civil penalties under
40 subdivision (c) and which repeat the deficiency shall be

1 subject to an immediate assessment of one hundred fifty
2 dollars (\$150) and one hundred fifty dollars (\$150) per
3 day thereafter until the deficiency is corrected.

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